

## THE RAIL ROAD v. HOYE.

All common warrants must be lodged with the principal surveyor, and entered in the manner prescribed; otherwise surveys made under them, will be deemed void as against others regularly made.—No positive rule, or law can be suffered to be made the instrument of fraud.—Where there is a material difference between the location in the surveyor's book, and the actual survey, the latter is taken as a virtual abandonment of the former.—In caveat cases, there being no appeal, it is usual, where there is a reasonable doubt, to let the patent go, so as thereby, in effect, to give the parties the benefit of an appeal.

THIS case arose in the land-office upon cross-caveats, the one by *The Baltimore and Ohio Rail Road Company*, as the holders of a certificate of a tract of land, called *Clara Fisher*, against the issuing of a patent on the certificate for the tract of land, called *River's Bend*; and the other by *The Chesapeake and Ohio Canal Company*, as the assignee of a certificate obtained by *William W. Hoyer*, of the tract of land, called *River's Bend*, against the issuing of a patent on the certificate of the tract of land, called *Clara Fisher*.

It appears, that about the 23d of May, 1828, the surveyor of Allegany county, was requested to attend on the Potomac river, near the mouth of Sidelinghill creek, to execute some warrants held by *John V. L. McMahon*, for the use of *The Baltimore and Ohio Rail Road Company*; that the surveyor, being otherwise engaged, sent his deputy, who made the survey, as required, under a common warrant, of the tract called *Clara Fisher*, on the 25th day of May, 1828. But the warrant not having been put into the surveyor's hands until four days after, that is, on the 29th of May, he therefore dated the certificate of survey for *Clara Fisher* on that day, and not of the day when the survey was actually made.

On the other side, it appears, that *William W. Hoyer*, under whom *The Chesapeake and Ohio Canal Company* claim, as his assignee, having a special warrant, placed it in the hands of the surveyor of Allegany county, 'which warrant, the surveyor says, was by me, on the 28th day of May, 1828, located for the said *William W. Hoyer*, in a book kept by me for the purpose, on the bank of the Potomac river, below and adjoining to the lines of a tract of land, the property of *Mr. Lantz*, which tract of land lies at the mouth of the Devil's Alley run; and to extend down from the lines of said *Lantz's* land with the meanders of the Potomac river to the lands formerly belonging to *McQueen*, and now said to belong to *Mr. Hughes*, and to extend out from the river for quantity.'